

Audit Report



DOD USE OF MULTIPLE AWARD TASK ORDER CONTRACTS

Report No. 99-116

April 2, 1999

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400 Army Navy Drive (Room 801)
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Acronyms

| | |
|---------|--|
| FAR | Federal Acquisition Regulation |
| FASA | Federal Acquisition Streamlining Act of 1994 |
| GAO | General Accounting Office |
| USSOCOM | United States Special Operations Command |



INSPECTOR GENERAL
DEPARTMENT OF DEFENSE
400 ARMY NAVY DRIVE
ARLINGTON, VIRGINIA 22202

April 2, 1999

MEMORANDUM FOR UNDER SECRETARY OF DEFENSE (ACQUISITION AND
TECHNOLOGY)

SUBJECT: Audit Report on the DoD Use of Multiple Award Task Order Contracts
(Report No. 99-116)

We are providing this report for review and comment. We conducted the audit in response to a congressional request. We considered management comments in preparing the final report.

DoD Directive 7650.3 requires that audit recommendations be resolved promptly. The Office of the Under Secretary of Defense (Acquisition and Technology) comments were not fully responsive. We request additional comments on Recommendations A.2, B.1, B.2, and B.3 by June 1, 1999.

We appreciate the courtesies extended to the audit staff. Questions on the audit should be directed to Mr. Terry L. McKinney, at (703) 604-9288 (DSN 664-9288) (tmckinney@dodig.osd.mil) or Mr. Bruce A. Burton, at (703) 604-9282 (DSN 664-9282) (bburton@dodig.osd.mil). See Appendix C for the report distribution. The audit team members are listed inside the back cover.

David K. Steensma

David K. Steensma
Deputy Assistant Inspector General
for Auditing

Office of the Inspector General, DoD

Report No. 99-116
(Project No 8CF-5022)

April 2, 1999

DoD Use of Multiple Award Task Order Contracts

Executive Summary

Introduction. This audit was requested by Senator Carl Levin. The Senator requested a review of multiple award contracts to determine whether DoD was spending money in a manner consistent with the statutory requirement, and whether this contract mechanism was used in the best interest of the Department. We identified 636 contracts awarded from FY 1995 through FY 1998, each having a value of at least \$5 million. Our review covered 12 multiple contract mechanisms, consisting of 50 contracts and 156 orders, valued at \$143.7 million. The maximum value of the contracts is \$2.6 billion.

Objectives. The primary audit objective was to determine whether the use of multiple award task order contracts by DoD was consistent with statutory requirements and in the best interest of the Department. We also evaluated the management control programs as they applied to the objective.

Results. Delivery orders for product contracts were awarded competitively and to the low bidder for 78 percent of the delivery orders. However, DoD use of multiple award task order contracting for services was not consistent with the statutory requirements. The statutory requirements call for each contractor to be given the opportunity to be considered for all orders over \$2,500 awarded under the multiple award mechanism. DoD use of multiple award contracts did not take full advantage of the benefit of having multiple bidders. Specifically:

- Contracting officers awarded task orders without regard to price even though price was not a substantial factor in the selection of vendors for the initial multiple award contract. As a result, task orders were awarded to higher-priced contractors on 36 of 58 orders, and price was not a significant factor during the contracting process. We identified \$3 million in additional costs resulting from awarding orders to contractors with higher-priced bids (Finding A).
- Contracting officers directed work and issued orders on a sole-source basis for 66 of 124 task orders, valued at \$47.2 million, without providing the other contractors a fair opportunity to be considered. Only 8 of the 66 orders, valued at \$8.8 million, had valid justification for sole-source award. As a result, DoD did not achieve the full benefits associated with the multiple award mechanism (Finding B).

Summary of Recommendations. We recommend that the Under Secretary of Defense (Acquisition and Technology) direct that multiple award contracts be used only in situations in which all contractors are capable of performing all work under the proposed contract and that task order selection should include price as a primary and substantial factor in selection. We recommend that the Under Secretary of Defense (Acquisition and Technology) add language to the Federal Acquisition Regulation stating that orders should be awarded to meet the guaranteed minimum stated in the contract only after the "fair opportunity to be considered" process has been allowed to occur. We also recommend that the Under Secretary of Defense (Acquisition and Technology) establish goals and performance measures to monitor the number and dollar value of task orders for services contracts that are awarded sole source and resolve the material management control weakness for multiple award task order contracts.

Management Comments. The Director of Defense Procurement provided comments for the Under Secretary of Defense (Acquisition and Technology) and agreed that multiple award contracts should only be used in situations in which all contractors are capable of performing the work. The Director disagreed with the need to: focus on technical issues during the initial contract award and pricing issues during the task order award process, add language to the FAR regarding the award of guaranteed minimum values, and establish goals and procedures to monitor and reduce sole source task orders on services contracts. Also, the Director did not believe there was a management control weakness related to multiple award contracts. Although not required, the United States Special Operations Command provided comments that were similar to the Director of Defense Procurement comments. A discussion of management comments is in the Findings section of the report and the complete text is in the Management Comments section.

Audit Response. The comments were not fully responsive. We request the Under Secretary of Defense (Acquisition and Technology) reconsider our recommendations to use price as a substantial factor during the task order award process, establish a process to reduce and track the volume of sole source task orders on services contracts, and determine whether to report use of multiple award contracts as a material management control weakness. We request the Under Secretary provide comments on the final report by June 1, 1999.

Table of Contents

| | |
|--|----------|
| Executive Summary | i |
| Introduction | |
| Background | 1 |
| Objectives | 2 |
| Other Matters of Interest | 2 |
| Findings | |
| A. Price Consideration in Multiple Award Contracts and Task Orders | 3 |
| B. Fair Opportunity for Task Orders | 14 |
| Appendixes | |
| A. Audit Process | |
| Scope and Methodology | 24 |
| B. Summary of Prior Coverage | 26 |
| C. Report Distribution | 27 |
| Management Comments | |
| Under Secretary of Defense (Acquisition and Technology) Comments | 29 |
| United States Special Operations Command Comments | 32 |

Background

We performed the audit in response to a request from Congress. In January 1998, Senator Carl Levin requested that we review DoD implementation of multiple award contracts authorized by the Federal Acquisition Streamlining Act of 1994 (FASA). The Senator's letter stated that DoD had ordered a substantial amount of goods and services using multiple award contracts, and requested that we determine whether or not the money spent by DoD on multiple award contracts was in the best interest of DoD.

Multiple award contracting allows the Government to procure products and services more quickly using streamlined acquisition procedures while using the advantage of competition to obtain optimum prices. Multiple award contracts are usually broad in scope, and often have maximum values of hundreds of millions of dollars. However, the broad scope of these contracts makes it very difficult to establish accurate pricing during the initial contract award process. Therefore, selection of contractors for multiple awards should focus on technical ability during the initial award. Contracting officials should then make price a substantial selection criteria for individual orders.

Multiple Award Task Order Contracts. The FASA authorized agency heads to enter into multiple award delivery and task order contracts for the procurement of goods and services. Multiple award contracts occur when two or more contracts are awarded from one solicitation. FASA established a general preference for using multiple awards and required that the implementing Federal Acquisition Regulation (FAR) "establish a preference for awarding, to maximum extent practicable, multiple task or delivery order contracts for the same or similar services or property." The FASA mandates use of multiple award contracts for advisory and assistance services contracts exceeding \$10 million and 3 years in duration.

Changes to Contracting Process. FASA authorized the use of broad statements of work, limited contractor protests, and mandated that multiple awardees have a fair opportunity to be considered for orders in excess of \$2,500.

Statements of Work. Statements of work for multiple award contracts can be general in describing the scope, nature, complexity and purpose of the services or supplies to be acquired. However, statements of work for the task or delivery order must specifically describe the work to be performed, and the work specified on the task or delivery order must be within the scope of the general contract statement of work.

Contractor Protests. Multiple awardees cannot protest the award of delivery or task orders except on the grounds that the order increases the scope, period, or maximum value of the contract. As a result, contractors cannot protest the award of orders based on unfairness or lack of competition

Fair Opportunity to be Considered. Multiple awardees must have a fair opportunity to be considered for award of an order in excess of \$2,500. However, FASA allowed agencies considerable leeway in defining what constitutes a fair opportunity. Contracting officers have broad discretion to determine how orders are awarded, provided that the selection criteria are set forth in the solicitation and contract. As a result, contracting officers must use prudent business judgment to consider past performance, quality of deliverables, cost control, price or cost, and other factors that are relevant. FASA and the FAR prohibit allocation of orders among the multiple awardees. The Office of Federal Procurement Policy, in conjunction with the Defense Information Systems Agency, the Department of Transportation and the National Institute of Health, established a goal that 90 percent of task orders over \$2500 have more than one awardee bidding for an order.

Objectives

The primary objective was to determine whether DoD use of multiple award task order contracts was consistent with statutory requirements and in the best interest of the Government. We also evaluated the management control programs as they applied to the objective. See Appendix A for a discussion of the audit process and a summary of prior coverage related to the audit objective. See Finding B for a review of the management control program.

Other Matters of Interest

The Congressional Authorization Act for FY 1999 directed the Inspector General, Department of Defense to determine if other Federal agencies charged DoD discriminatory fees to use their contracts and, if so, whether any refunds may be due the Department. This direction was initiated because the General Accounting Office (GAO) had reported that at least one agency charged service fees to other agencies that resulted in these other agencies paying higher costs. We contacted GAO and determined that GAO found no other agencies except for the one previously reported that charged service fees to other agencies for the use of their contracts. Accordingly, we did not review any multiple award contracts issued by other Federal agencies that DoD could have purchased from. GAO had already reviewed these contracts and concluded that problems with service fees were isolated. During the audit we reviewed 12 multiple award contract mechanisms issued by the Department that could have been used by other agencies or departments. We did not identify any instances where other Federal agencies purchased from these mechanisms. Accordingly, we concluded that service fees were not an issue.

A. Price Consideration in Multiple Award Contracts and Task Orders

Contracting officers awarded multiple award task orders without considering price even though the price was not a substantial factor in the selection of vendors for the initial multiple award contract. This occurred because prices could not be established with sufficient certainty at the time of the initial contract award and contracting officers did not make cost a substantial factor in task order awards. As a result, DoD spent at least an additional \$3 million for task orders that were awarded to higher priced contractors and price was not a significant factor during the contract process. In contrast, delivery orders for goods were awarded to the low-cost bidder for 78 percent of the orders.

Criteria

FASA. Under FASA, contractors on a multiple award mechanism were to be provided a fair opportunity to be considered for award of task or delivery orders over \$2,500. The FAR, Part 16, implemented this FASA requirement and stated the competition requirements for multiple award contracts.

FAR Requirements. FAR Part 16 505 (b) (3) provides that the "competing independently" requirement is satisfied for multiple award contracts when:

the price for supplies or services is established in the contract at the time of contract award or,

the contracting officer solicits offers from two or more awardees for order placement when the price for the supplies and services is not established at the time of contract award.

However, the underlying principles guiding both multiple award procurements and other procurements is that award should be made through competition. In 1984, Congress passed the Competition in Contracting Act because of concerns that competition had become the exception rather than the rule. Competition not only provides substantially reduced cost, but also ensures that all interested offerors have an opportunity to sell to the Government.

Price Considerations. While the regulations allow orders under multiple award contracts to be issued without competition, we believe it is not in the best interest of DoD that price consideration in task orders has become the exception rather than the rule. In total, 36 of 58 task orders with more than one bidder were awarded to higher bidders at an additional cost of \$3 million to DoD

This is especially important since the uncertainty and broadness of the initial contract made establishment of price as a substantial factor in the contract competition unrealistic.

Initial Multiple Award Contract Pricing

Undetermined scope of work and the requirements of orders that would be needed made it difficult to establish pricing for high dollar multiple award contracts at the time of contract award. Evaluation teams and contracting personnel relied on incomplete methods to review contractor pricing, and often were only able to establish unit prices or evaluate portions of the contract price without establishing that price was a substantial factor in the initial contractor selection.

Business Level. Uncertainty of the level of work that would be awarded to any of the contractors made it difficult for contractors to forecast realistic costs, especially burdened rates. Prudent business practice would dictate that contractors conservatively estimate costs and base their overhead rates on a lower amount of work rather than a higher amount since further work on the multiple award contract was largely unknown. Contractors were only guaranteed a small portion of work under the multiple award contracts, though they could potentially receive much more. For example, a contractor may receive as little as \$50,000 in business but could receive as much as \$150 million. The following table shows the difference between minimum guaranteed amounts and potential amounts.

Table 1. Minimum Amounts vs. Expected Amounts (Services)

| Activity | Solicitation Number | Minimum Amount Guaranteed | Maximum Amount Each Contract | Overall Contract Value |
|-------------------------------------|---------------------|---------------------------|------------------------------|------------------------|
| Army | DASW01-97-R-0043 | \$250,000 | None Specified | None Specified |
| Army | DAHA90-95-R-0034 | \$100,000 | \$ 30,000,000 | \$120,000,000 |
| Army | DAHA90-95-R-0035 | \$100,000 | \$ 30,000,000 | \$120,000,000 |
| Navy | N66001-97-R-8000 | \$200,000 | \$ Each Varied | \$ 37,013,483 |
| Air Force | F04699-95-R-0243 | \$ 25,000 | \$ 171,000,000 | \$171,000,000 |
| Air Force | F33657-95-R-0083 | \$ 25,000 | \$ 33,000,000 | \$ 99,000,000 |
| United States Special Operations | USZA22-96-R-0052 | \$ 50,000 | \$ 150,000,000 | \$450,000,000 |
| Defense Logistics Agency | SP4700-96-R-0033 | \$100,000 | \$ 180,000,000 | \$180,000,000 |
| Defense Logistics Agency | SP4700-96-R-0034 | \$ 25,000 | \$ 25,000,000 | \$ 25,000,000 |

Scope of Work. Multiple award contracts contained scopes that were very broad in nature. Three of the contracts described general tasks but added the statement "but is not limited to" which broadened the scope. All of these contracts contained similarly broad scopes which limited the contractor's ability to specifically define requirements for realistic forecasting of costs and prices. Often, the contracting offices did not know what the requirements were going to be.

Contract Types Used. Eight of nine multiple award solicitations for services contained a mix of contract types, which further added to the uncertainty in establishing price. Contracts included firm-fixed-price, cost-plus-fixed-fee, and time and materials line items that had different risks and pricing philosophies for the Government and contractor. For example, firm-fixed-price contracts place most of the risk on the contractor and may result in higher pricing. Cost-plus-fixed-fee and time and materials contracts are less risky for contractors and include lower fees. The risks are reversed for the Government. The following table shows the various types of contracting mechanisms included in the multiple award contracts.

Table 2. Contract Types Used for Multiple Award Contracts

| Solicitation No. | DoD Activity | Location | Contract Type |
|-------------------|--|-----------------------------------|---|
| DASW01-97-R-0043 | Army | Pentagon | Fixed Price |
| DAHA90-95-R-0034 | Army | Falls Church, VA. | Fixed Price/Time and Materials |
| DAHA90-95-R-0035 | Army | Falls Church, VA. | Fixed Price/Time and Materials |
| N66001-97-R-8000 | Navy | San Diego, CA. | Cost-Plus-Fixed-Fee |
| F04699-95-R-0243 | Air Force | McClellan AFB, Sacramento, CA. | Cost-Plus-Fixed Fee/Time-and-Materials/Firm-Fixed-Price |
| F33657-95-R-0083 | Air Force | Wright-Patterson AFB, Dayton, OH. | Cost Reimbursable/Time and Materials |
| USZA22-96-R-0052 | United States Special Operations Command | MacDill AFB. FL. | Fixed Price/Time and Materials/Cost-Plus-Fixed-Fee. |
| SP47000-96-R-0033 | Defense Logistics Agency | Alexandria, VA | Firm-Fixed-Price/Time and Materials |
| SP4700-96-R-0034 | Defense Logistics Agency | Alexandria, VA. | Firm-Fixed-Price/Time and Materials |

Pricing Evaluation – Source Selection. Contracting officials deemed prices reasonable from competition without evaluating the full range of prices and without establishing that cost was a substantial factor in the initial contractor selection in 6 out of 8 multiple award contract mechanisms. For example, under an Air Force multiple award contract at McClellan Air Force Base, contractors could receive awards of \$171 million of work, however, they were only evaluated against work estimated to cost \$1.6 million. The contracting officer even acknowledged that “in order to have a meaningful trade-off between cost and technical aspects during source selection, the cost must be a realistic representation of future costs.” However, while costs were shown in the source selection plan as 35 percent of the evaluation criteria, we could find no evidence to indicate that the entire potential price was evaluated or that whatever price was evaluated actually represented 35 percent of the selection criteria.

Legal officials at McClellan Air Force Base were also concerned with cost realism. They questioned the application of a mathematical formula to evaluate the realism of cost proposals in which the cost and or price realism, completeness, and

reasonableness analysis were rolled up into statistical measures based on mean, median, and standard deviation. The officials indicated that this created a significant bid protest risk that may be difficult to defend. They also questioned the Air Force use of an arithmetic mean of actual scores reviewed on a sample problem as a pass/fail criterion, stating that the Air Force had established the pass/fail line at 65.3 points, which meant one offeror with 66 points passed the problem and another contractor with 64 points failed the problem even though it appeared that no substantial difference existed in quality between problem respondents.

National Guard Bureau officials described their inability to establish pricing on their multiple award contract by stating that.

The government cannot adequately predict how many hours will be needed for all tasks...the appropriate amount of hours will be negotiated under each individual task order.

Similarly, the other contracting organizations used incomplete pricing methods that included evaluations of less than the full potential price, sample projects that did not cover the full spectrum of proposed categories, and evaluations that did not establish cost as a substantial factor.

Pricing of Task Orders

Once the contractors were selected, primarily on their technical capabilities, it would be logical that cost would be a substantial factor during award of task orders. However, instead of using the task order award phase to establish better pricing, contracting officials reemphasized technical issues and downplayed or did not consider cost. Contractors who had been initially evaluated technically superior during the initial award process and capable of performing any of the assigned tasks were re-evaluated during the task order award process. In total, 36 of 58 orders that were not sole source were awarded to contractors that were not the low priced offeror at an additional cost of \$3 million or 21 percent. The 36 orders consisted of 4 awarded by the Army, 5 by the Navy, 11 by the Air Force, 9 by the Special Operations Command and 7 by other DoD activities. Also, 66 orders were issued on a sole-source basis and contractors were not given a fair opportunity to be considered. (See Finding B). The following graph shows that about half of the dollars awarded were on a sole-source basis. Furthermore, only 23 percent of the dollars were awarded to the lowest price offeror.

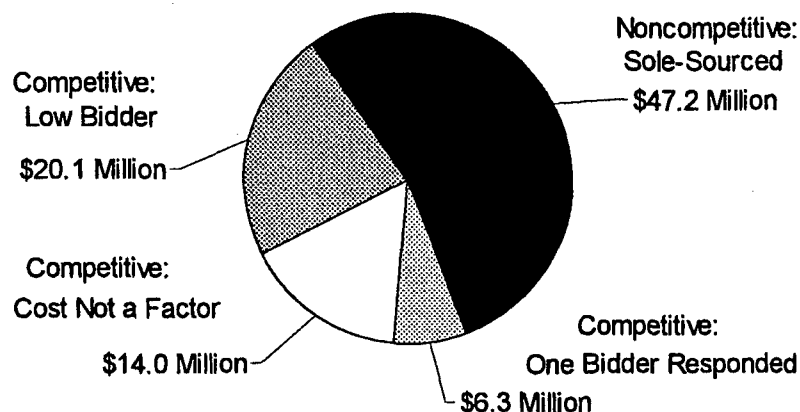


Chart 1. Breakdown of Task Orders Awarded for Services by Dollars

Technical Emphasis. One of the key features of a multiple award mechanism is that the acquisition process can be streamlined. All contractors on the contract are technically capable of performing any of the tasks contracted out. Orders can, therefore, be quickly awarded among the contractors. During the initial award phase of multiple award contracts, contractors were selected after being considered technically capable, as determined by detailed technical evaluations. In some cases, selected contractors had been performing similar work for the customers prior to being selected for the multiple award contract. Documentation in the award files described contracting officials' satisfaction with the technical abilities of the contractors who were selected. However, instead of focusing on getting the best price when awarding task orders, contracting officials routinely used the results of additional questionable technical evaluations to award task orders without regard for price differences. When the additional technical evaluations identified minor technical differences between the offerors, the contracting officer, in most cases, awarded the task order to the contractor who had submitted the higher price although the other contractors had previously been determined to be technically acceptable.

Air Force contracting officials used a minor 2 point difference in an additional technical rating on one task order to make an award to a contractor whose price was \$90,916, or 19 percent higher than the other contractor. Both contractors were technically capable of performing the work. In the most extreme example, another Air Force contracting office made an award to a contractor whose price was 134 percent higher than another offer, which caused the internal legal reviewer to question whether adequate price reasonableness occurred. The lawyer

recommended that a "sanity check" on the reasonableness of the successful contractor's prices be performed. One day later the contracting officer completed negotiations with the high bidder, albeit with minor adjustments to the proposed price.

The contracting officials were influenced or limited by actions of the program office. Because of limited expertise at the contracting office, contracting officers at three locations relied on program personnel to perform technical evaluations of bidders on the task orders.

Input of Program Office. Technical reviews, to a large extent, were realistic. However, program officials sometimes favored contractors that were incumbents on prior contracts, or otherwise preferred one contractor over another. The degree of influence varied among offices, but program officials were able to write evaluations that technically favored one bidder over another so that cost was not a substantial factor in the selection decision. In the worst cases, technical evaluators were able to technically "disqualify" contractors before cost was even considered. This occurred even though all contractors were initially determined capable of performing any task under the contract. In 36 orders, contractors were technically disqualified or ruled inadequate without allowing cost consideration to figure into the selection. In one example, the Special Operations Command program office recommended award to one contractor based on the technical evaluation, but upon realizing that the contracting officer was about to award to the lower priced contractor that it did not prefer, requested an additional chance to show that the higher priced contractor was the best value. The contracting officer however, ultimately, determined that the program office did not base best value on the proposals but on contractor favoritism, and recommended award to the lower priced contractor. Just 4 days after award was made, the program office attempted to bypass the selected contractor by awarding a sole source 8(a) contract to the subcontractor of the contractor they favored, on the basis that it was outside the scope of the awarded task order. Legal review determined that the tasking fell within the scope of the task order and that a sole-source award was not legally supportable.

A Special Operations Command technical evaluator ruled two competitors technically inadequate and selected another contractor, the incumbent from a prior contract, at a cost that was 31 and 42 percent higher, respectively, than the disqualified contractors. In other cases, program office influences went beyond making technical evaluations. At one Navy contracting office that was performing contracting functions for another DoD organization, the program office actually selected the preferred contractor without performing a cost/technical tradeoff analysis. In other cases, that same contracting officer directed changes to the scope of work and subcontractors both before and after the task order selection. The program office influence had a two-fold effect. It eliminated lower priced contractors and discouraged other contractors from bidding on task orders.

Discouraged Competitors. Contractors did not provide bids on task orders, stating that they would not win the award because they were bidding against incumbents or contractors that were preferred by the program office. In one case, a contractor was afraid to ask questions about prospective awards or awards that they did not win, because of concern about future program office decisions. Ten task orders were directed to a preferred contractor because no other contractor within the multiple award procurement submitted a bid. Seven of these task orders were awarded to the incumbents from a prior contract. One contractor described its rationale for not bidding on a task order as belief that the program office was satisfied with the incumbent contractor.

The Office of Management and Budget has warned agencies that it no longer will tolerate their use of shortcuts in choosing vendors for their information technology projects. On January 11, 1999, the Administrator, Office of Federal Procurement Policy, sent a memorandum to senior procurement executives stating that agencies should stop the practice of designating a preferred vendor because choosing the preferred vendors discourages other vendors from competing.

Conclusion

Contracting officials engaged in questionable procurement practices which resulted in DoD paying more for services procured under multiple award contracts. Contracting officials justified awarding task orders to desired contractors at higher prices by identifying minor technical differences as a result of technical evaluations performed during the task order award process. Multiple awards would benefit the Government in those contracting situations where technically capable contractors are selected in the initial selection process and orders are awarded among those contractors with price as a primary selection factor.

Product Delivery Orders

In total, we reviewed 156 orders including 32 delivery orders on contracts for products and 124 task orders on contracts for services. On the 32 delivery orders for products at three contracting organizations, 25, or 78 percent, of the orders were awarded to the low cost bidder and price was the primary factor for selecting delivery order awardees. The Engineering Field Activity, Northwest, Poulsbo, Washington, had the best procedures in place for multiple award mechanisms, and could be used as a good role model for those contracting activities that want to improve their multiple award contract procedures or for organizations starting to award multiple award contracts. The findings of this report address the 124 orders for services in which problems were identified.

Recommendations, Management Comments, and Audit Response

A. We recommend that the Under Secretary of Defense (Acquisition and Technology):

- 1. Direct that multiple award contracting be used only in situations in which all contractors are capable of performing all work under the proposed contract, and**
- 2. Direct that the initial contract selection focus primarily on technical capabilities and that subsequent task order selection include price as a primary and substantial selection factor.**

Director of Defense Procurement Comments. The Director of Defense Procurement partially concurred with Recommendation A.1, stating that contractors obtaining awards should be capable of performing the work and adding that FAR 9.104-1 already requires that a prospective contractor have all the necessary resources and technical skills to perform the contract. The Director stated that it was not intended that each awardee be able to provide exactly the same services and that unique or specialized work could not necessarily be performed by all awardees. The Director did not believe additional direction was needed. The Director nonconcurred with Recommendation A.2, stating that there may be instances where a particular task may need to be awarded to other than the low priced offeror due to specific technical expertise, quality, timeliness, and past performance.

Audit Response. The Director of Defense Procurement comments were not fully responsive. While we agree with the Director that there may be unique or specialized tasks that cannot be performed by all awardees and that all awardees will not be equally skilled, the audit found that contracting officials used uniqueness and specialization as the rule rather than the exception, to award task orders to contractors; and the contractors receiving the work generally submitted higher offers. Contracting officials used uniqueness and specialization as a basis to award 36 of 58 task orders to contractors who were not the low bidder at additional costs to the Government. We found no documentation related to the 36 task orders not awarded to low bidders that would support the contention that all awardees were not capable of performing the work. For example, for a task order to reproduce documents, contracting officials used specialization and a 2 point technical difference as a justification for awarding the task order to a contractor, at an additional price of \$90,916 (or 19 percent higher than another contractor) because of its specialized skills. The contracting officials attempted to further justify the higher cost by saying that the contractor's offer was more in line with the amount that has historically been paid for this type of effort. Clearly, use of this justification is unwarranted and relied heavily on estimates developed from the high prices paid to incumbents under prior contracts. In another example,

contracting officials used a 1 point technical difference to justify the award of a task order to a contractor at a price \$32,493 higher than an offer submitted by another multiple award contractor who had been given an "exceptional" rating against the solicitation's stated technical evaluation criteria. We believe that the scope of work in the multiple award solicitation packages should be clearly defined and that all awardees should be able to perform the work. Assuming that all other factors (past performance, timeliness, etc.) are equal among the awardees, we feel that price should be a primary and substantial factor, when awarding task orders. Otherwise, DoD achieves the benefits of streamlining, but loses the benefits of competition and vendors can become discouraged

United States Special Operations Command Comments. The United States Special Operations Command (USSOCOM) did not agree with Recommendation A.1, stating, "implementation of this recommendation may limit opportunities for contractors, in particular small businesses that may only be able to perform a portion of the work required under a large contract. This would only hinder competition." USSOCOM did not agree with Recommendation A.2, stating that although all of its contractors are capable of performing all the work on all contracts, all contractors do not have the same level of expertise in all areas. USSOCOM states the language must be clear that best value techniques can be applied at the task order level and that cost must be a factor in the decision of award. USSOCOM stated that in a time-and-materials contract the offeror's understanding of the effort and the offeror's method of performing the work have more to do with the final cost to the Government than the proposed price. USSOCOM also states that they look at a contractor's approach and choose a contractor based on "best value" to the Government.

Audit Response. We disagree with USSOCOM's rationale for objecting to Recommendation A.1. Prime contractors have teams of subcontractors working with them. Those contractors who can perform only portions of the work would function well as subcontractors. The audit determined that contractors who had received exceptional technical ratings and who were determined to be capable of doing the work during the initial award process were not selected for task order awards, even after submitting lower offers, due to purported technical deficiencies.

The USSOCOM response to recommendation A 2. does not address what was identified during the audit. Since the use of time-and-materials type contracts place more risk on the Government, increased surveillance is necessary. Contracting activities did not perform adequate surveillance on time-and-materials contracts or on other cost-reimbursable type contracts. The failure to perform adequate surveillance affects the final cost of the task orders.

USSOCOM Comments on the Finding and Audit Response

USSOCOM Comment. USSOCOM disagrees that the FAR or FASA require that cost be a substantial factor for the issuance of a task order

Audit Response. The FAR requires price to be a substantial factor for competition to occur. USSOCOM's opinion relies on the position that the initial award was competed properly. The report describes the uncertainty and other flaws in the initial contract competition which made it unrealistic to establish cost as a substantial factor during contractor selection.

USSOCOM Comment. USSOCOM stated that the report should be modified to reflect that only four orders were issued to a contractor who was not the technically acceptable low cost offeror.

Audit Response. We disagree because contractors were unjustifiably ranked low or disqualified when, in fact, technical differences were minor and contractors were capable of doing the proposed work. Quantifiable cost and technical trade off analyses were not performed.

USSOCOM Comment. USSOCOM requested that the report show that the contracting officer, with the support of legal counsel, determined that the work was part of the effort awarded on the existing order.

Audit Response. Our point was not to show that the contracting officer and/or legal erred; but rather to show where the program office attempted to direct work to a favored contractor, and that the legal office disagreed with this approach. We believe the contracting officer and legal counsel acted appropriately in this situation. In fact, we issued a letter of commendation to the contracting office at USSOCOM for performing their duties diligently.

USSOCOM Comment. USSOCOM stated that the paragraph on page 9 about the input of the program office should be revised because it appears that the contracting officer followed the technical evaluator's recommendation without question, and that is not the case

Audit Response. Our point was not to show where the contracting officer erred, but rather to show where the program office, through the technical evaluator, attempted to select an incumbent contractor at a much higher price. We believe that the contracting officer acted appropriately in this situation also.

B. Fair Opportunity for Task Orders

Contracting officers directed work to preferred contractors without allowing all multiple award contractors a fair opportunity to be considered. Sixty-six of the 124, (53 percent) task orders for services that we reviewed were awarded on a sole-source or directed-source basis. This occurred because contracting personnel:

- relied on the broad guidance of the FAR to erroneously justify sole-source awards, or
- did not provide adequate justification.

As a result, DoD did not receive the benefits of multiple bids which was a primary element of the multiple award mechanism.

Criteria

Part 16 of the FAR implements the portion of FASA regarding multiple award contracts. FAR subpart 16.505, "Ordering", states that each awardee will be provided a fair opportunity to be considered for each order worth more than \$2,500 unless certain exceptions apply. These exceptions are:

- the need for the supply or service is of such urgency that providing a fair opportunity would result in unacceptable delays,
- only one contractor is capable of providing the supply or service because the supply or service is unique or highly specialized,
- the delivery or task order is a logical follow on to a previous order already issued under the contract, provided all awardees were provided a fair opportunity to be considered for the original order, or
- it is necessary to place an order with a contractor to satisfy a minimum guarantee.

The regulation does not define "a fair opportunity to be considered" and allows the individual contracting officers to make this determination. The regulation suggests that contracting officers consider factors such as past performance on earlier tasks under the multiple award contract, quality of deliverables, cost control, price, cost, or other factors. The contracting officer has wide discretion for ensuring that the Government is providing contractors a fair opportunity to be considered for award.

Proposed FAR Changes

In September 1998, the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council proposed to amend the FAR to clarify the procedures for awarding orders. The proposed rule amends the procedures for placing orders under multiple award contracts at FAR 16.505(b)(1) to emphasize that agencies shall not use any method of placing orders, such as allocation or designation of any preferred awardee(s), that would result in fair consideration not being given to all awardees prior to placing each order. Although we believe that the proposed changes are beneficial, the changes will not resolve all the issues we identified.

Fair Opportunity to be Considered

We reviewed 124 task orders on 27 contracts for services that were issued under 9 different multiple award mechanisms at 7 contracting activities. Sixty-six of the 124, or 53 percent, of task orders for services that we reviewed were awarded on a sole-source or directed-source basis. All seven organizations issued sole-source task orders. The 66 task orders, valued at \$47.2 million, were awarded as sole-source orders for a variety of reasons. However, orders were only supposed to be sole source if the exceptions cited in the regulation applied. Eight of 66 orders, valued at \$8.8 million, had valid justification. Table 3 summarizes the reasons for sole sourcing task orders and the respective quantity and amount of the orders.

Table 3. Sole Source Awards

| <u>Reason for Sole Source</u> | <u>Number of Task Orders</u> | <u>Dollar Amount</u> |
|-------------------------------|------------------------------|-----------------------|
| Guaranteed Minimum | 10 | \$1.5 Million |
| Logical Follow-on | 23* | \$14.0 Million |
| Urgency and Uniqueness | 6 | \$4.3 Million |
| Inadequate Justification | | |
| Prior Experience | 8 | \$21.3 Million |
| No Justification | 11 | \$3.8 Million |
| Allocated | 6 | \$1.6 Million |
| Same Subcontractors | 2 | \$0.7 Million |
| Total | 66 | \$47.2 Million |

*Eight of these orders, valued at \$8.8 million, were awarded with a proper justification.

Guaranteed Minimum. FAR part 16.505 allows contracting organizations to award sole-source task orders on a sole-source basis to satisfy minimum guarantee contract amounts. However, the regulation is silent regarding when (in the contract period) to award a task order without providing other multiple award contractors a fair opportunity. We believe a prudent business decision would be to use this exception only when the contract period is nearing completion and the contractor has not yet been awarded a task order. In most cases, this would allow contractors to receive competitive awards that reached or exceeded the minimum guarantee but would still allow the Government to maintain the benefits of competition because the sole-source minimum-guaranteed awards would not be used. Ten task orders, valued at \$1.5 million, were awarded to contractors under the justification of a minimum guarantee. The latest task order awarded to satisfy a minimum guarantee was 3 months after contract award, and 9 of the 10 minimum guarantee awards were the first task order awarded on the contract. The contracting period was 1 year. Although the award of the 10 orders did not violate the FAR, it may not have been the best business decision satisfying the minimum guarantee so early in the contract period. Each contractor, within months of the contract award, was awarded more than enough money to meet its guaranteed minimum without making a sole-source award to satisfy the minimum guarantee.

For example, the Navy awarded a task order as a minimum guarantee to System Planning Corporation for \$250,000 followed by three more sole-source task orders totaling \$550,000 justifying these orders as logical follow-on task orders. However, in this case, the Navy lost the benefits of competition for all 4 task orders totaling \$800,000.

Logical Follow-On. The FAR allows contracting organizations to issue a sole-source task order if it is a logical follow-on task order to an order previously issued under the contract, provided all awardees were given a fair opportunity to be considered for the original order. Eight of these orders, valued at \$8.8 million, were properly awarded with proper justifications. However, contracting officials did not adhere to the FAR when awarding orders under this exception. Fifteen of 23, or 65 percent, of the orders awarded as logical follow-on task orders did not meet the FAR requirements for the exception. In each case, the other multiple award contractors were not given a fair opportunity to be considered for the task order original to the task order justified as "follow-on." The original orders were either awarded as sole-source awards, because the competition was tainted, or because the task order was related to a prior contract. For example, the National Guard Bureau awarded two task orders as logical follow-on task orders under a multiple award contract. In both instances, the initial task orders were sole sourced to the specific contractor without considering the other three contractors.

Urgency and Uniqueness. The Special Operations Command, the National Guard, and the Defense Logistics Agency awarded six task orders claiming urgency and uniqueness. Two orders were sole sourced because of urgency and four because of uniqueness. In all instances, the justifications were not adequate. Regardless of whether the sole source was based on urgency or uniqueness, the contracting officers made no determination that the other contractors were not capable of performing the work. The fact that the other contractors were awardees on the multiple award contracts indicated that they were qualified.

Inadequate Justifications. Twenty-seven task orders were directed to specific contractors using other faulty justifications. Eight orders were sole source because of prior experience and 11 orders were sole source using no justifications. One of these was out of the scope of the multiple award contract. In addition, six task orders were allocated. Each of three contractors in two multiple award mechanisms received awards for the same work. In one, an order was issued to each of the three contractors to do the same research work. In the second, each of the three contractors was issued an order to track their expenses incurred on the multiple award mechanism. Also, the last two task orders were, in effect, sole source because the prime contractors proposed using the same subcontractors that were doing most of the proposed work.

Prior Experience. The FAR does not allow task orders to be awarded as sole source unless the service is unique and no other contractor can perform the work. Eight orders were awarded to a contractor because of prior experience, but contracting and program office personnel did not attempt to justify that the contractor was the only one capable of providing the service or that the service

was so unique that no other contractor could provide the service. As a result, none of the other contractors were afforded a fair opportunity to be considered. The contracting personnel should have competed these delivery orders. Program personnel stated that contractors were required to do the work because the prime contractor or a subcontractor had prior experience. Contracting officials allowed this to occur without determining whether the other contractors could perform the work and without giving them the opportunity to be considered. The contracting personnel did not question any of these requests and were inconsistent in awarding the sole-source orders.

For example, Air Force contracting officers at McClellan Air Force Base awarded four task orders to contractors because the contractor had prior experience. The Air Force did not give the other contractors a fair opportunity to be considered. Moreover, the contracting officer awarded an order sole source because the contractor had prior experience although all four contractors were capable of performing the work. One Army contracting organization inconsistently handled program office requests for sole-source awards based on experience. A program office requested that the incumbent for an order be awarded a task order because of prior experience from a previous contract. The contracting officer issued the order to that contractor. Six days later, another program office requested a sole-source order because of prior experience. The contracting officer afforded the other contractors of the multiple award mechanism an opportunity to provide a bid on the task order. No other offers were received and the incumbent was awarded the order.

The National Guard Bureau, in fact, directed all task orders awarded through June 1998 to preferred contractors. The supervisor of the contracting office acknowledged that all 52 task orders awarded, valued at \$41.9 million, were directed. We reviewed 13 of the 52 (nine were directed because of prior experience) and determined that all were directed to specific contractors. For instance, program office personnel selected a particular prime contractor because program office personnel were interested in obtaining the services of a specific subcontractor that had prior experience.

No Justification and Unrelated Scope Addition. Eleven of the 66 orders were directed to contractors without any justification, and one order was outside of the scope of the multiple award contract. In this case, the order was awarded for the Special Assistant for Gulf War Illnesses to BDM Engineering Services. The scope of the multiple award mechanism consisted of obtaining Federal Information Processing services for software definition and design, business applications development and maintenance, risk analysis, facilities management, and scientific engineering applications. The National Guard Bureau awarded the order to BDM for obtaining, documenting, and analyzing information potentially related to Gulf War illnesses; and documenting the data in a database. Besides being out of scope, this one delivery order eventually cost \$16.5 million or 55 percent of the ceiling any one contractor could receive in the multiple award contract.

Also, this one task order effectively eliminated BDM as a competitor on other orders because it reached its ceiling 22 months into a potential 60 month period. Another order was awarded to the only contractor asked to submit a bid.

Again, no determination was made or documented that stated the other contractors were not capable of performing. Six other orders were awarded on two multiple award mechanisms based on a portioning or allocation of work to each contractor.

Allocated Work. The FAR specifically prohibits allocating work to contractors in a multiple award contract, but two contracting activities awarded task orders to each of the contractors to perform the same work. Each contractor received approximately \$500,000 from the Navy for "seedling" projects. The purpose of the single task was to develop, assess, and characterize ideas for new programs for the Defense Advanced Research Projects Agency. According to Navy documentation, any new idea that results in a project would then be competed among the multiple awardees. The Air Force also awarded orders to three contractors for the same task. Each contractor received from \$14,000 to \$20,000 to produce expenditure reports on orders obligated against their contract. In our opinion, the contractors were obligated to provide this information as part of eligibility for contract payment.

Same Subcontractors. The Navy awarded two task orders that were, in effect, a sole-source award because two prime contractors proposed the same subcontractors. In one instance, the award was, in effect a sole source, because both prime contractors proposed the same subcontractor, which performed 98 percent of the work. The Navy awarded this task as a cost-plus-fixed-fee contract. Not only did the Navy direct the award, the contracting officer awarded the order as a cost type order that entailed greater risk to the Government, after which the prime contractor issued fixed-price subcontracts. The Navy awarded another task order in which all three prime contractors proposed using the same subcontractors, where more than 90 percent of the work was to be performed by the subcontractors.

Conclusion. Contracting officials were not adhering to the intent of FASA and obtaining optimal competition. Too many task orders were awarded as sole-source procurements because the contracting personnel did not adhere to the FAR because of distorted or faulty exceptions.

Multiple Bids Decrease Prices

By awarding task orders as sole-source awards, DoD has missed one of the key benefits of having multiple bidders vie for work under the multiple award mechanism on 66 task orders. Specifically, contracting officials' broad interpretation of the new FAR regulation pertaining to multiple award contracts resulted in many sole-source awards and triggered other sole-source awards. For example, awarding tasks to meet the guaranteed minimum amount early in the

contract period resulted in additional sole-source awards being made because the orders were considered logical follow-ons. The use of the sole-source task orders in a multiple award contract should be closely scrutinized because it defeats the purpose of achieving the benefits of multiple bids. Directed or sole-source awards should be rare when multiple qualified contractors are available.

Improving Management and Visibility

The Department was not aware of any problems with multiple award contracts until the audit. The lack of data and visibility into what was happening with the contracts is one underlying cause. To improve oversight and competition for multiple award contracts for services, the Department needs to establish goals, performance measures, and strategies. Until the Department collects data and tracks the impact of the policy changes, the Department will not know if the problem is corrected and whether the benefits of acquisition reform are achieved.

Material Management Control Weakness

DoD Directive 5010.38, "Management Control Program," as revised August 26, 1996, requires DoD organizations to implement a comprehensive system of management controls that provides reasonable assurance that programs are operating as intended, and to evaluate the adequacy of the controls. We reviewed management control procedures relating to procurement of products or services through multiple award contracts in DoD. We also reviewed management's self-evaluation of those management controls. We identified material management control weaknesses as defined by DoD Directive 5010.38. DoD contracting activities management controls were not adequate to prevent program officials from directing sources of procurements, nor were they adequate to ensure full competition. DoD contracting activities did not identify acquisition and contract administration as an assessable unit. At 3 of the 10 contracting activities visited, there was an assessable unit that included functions of acquisition and/or contract administration. DoD contracting activity personnel did not identify any of the material weaknesses identified by this audit. Although it is too late to report the material management control weakness related to multiple award task order contracts in the FY 1998 annual statement of assurance, the Department should closely review implementation of corrective actions and determine if this material management control weakness should be reported for the FY 1999 annual statement of assurance.

Recommendations, Management Comments and Audit Response

Deleted Recommendation. As a result of the Director of Defense Procurement comments, and further consideration, we deleted draft Recommendation B.1 b and modified B.1.a which becomes Recommendation B.1. We deleted Recommendation B.1 b because we believe the Director can meet the intent of Recommendation B.1.b by accepting Recommendation A.2 or proposing a suitable alternative.

B.1. We recommend that the Under Secretary of Defense (Acquisition and Technology) provide additional language to FAR 16.505(b)(2)(iv) to state that awarding orders to meet the guaranteed minimum stated in the contract should be done only after the "fair opportunity to be considered" process has been allowed to occur.

Director of Defense Procurement Comments. The Director of Defense Procurement nonconcurred, stating that award of contractually required minimum quantities early in the life of the contract will establish a relevant performance track record that can be used in subsequent task order award decisions. The Director also stated that the need to meet a guaranteed minimum should not be used prematurely because it precludes providing other awardees an opportunity. However, because future requirements are unpredictable, it may be difficult to know how long to wait before awarding the minimum.

Audit Response. The Director of Defense Procurement comments are not fully responsive. We identified 10 task orders, valued at \$1.5 million, awarded under the justification of a minimum guarantee. Nine of the 10 minimum guaranteed awards were the first task order awarded on the contract. We believe that the minimum guaranteed amount should not be awarded immediately. Instead, procurement officials should do sufficient requirement planning to allow the "fair opportunity to be considered" process to occur before awarding the guaranteed minimum. Many of the awardees of multiple award contracts are companies that have been doing business with DoD for years and are a known quantity. We request that the Director reconsider and provide additional comments on the recommendation.

USSOCOM Comments. USSOCOM disagreed stating that "it is currently required by law and regulation that the minimum amounts be obligated at time of award"

Audit Response. We believe that the need to meet a guaranteed minimum should not be used prematurely as it precludes providing other awardees a fair opportunity to be considered. The obligation of funding and the award of sole-source task orders are two different actions.

B.2. We recommend that the Under Secretary of Defense (Acquisition and Technology) establish a goal that 90 percent of task orders for multiple award contracts will have multiple bidders, develop performance measures to identify the number and dollar value of task orders that are awarded sole-source on multiple award contracts for services and, identify strategies to monitor and reduce the number of sole source awards over a 3 year period.

Director of Defense Procurement Comments. The Director of Defense Procurement nonconcurred, stating that the DD 350 already captures data on orders under contracts, including whether they are sole source. The Director did not believe an independent strategy was needed beyond the statutory requirement to seek competition whenever practicable.

Audit Response. The Director of Defense Procurement comments are not fully responsive. Although the Director stated that the DD 350 captures data on orders under contracts, including whether they are sole source, the DD-350 does not specifically identify orders related to multiple award contracts. In addition, the DD 350 contained contracts erroneously identified as multiple award contracts while omitting some multiple award contracts. Because of the errors in the DD 350 system, we had to develop a universe to the extent possible through other sources including the internet and summary of contracts awarded. The Department is in its current situation because it lacks any visibility into the number of sole-source orders issued on multiple award contracts. The Department is in the process of making guidance changes for multiple award contracts. The Department cannot assess the impact of the changes and progress towards achieving increased competition unless it establishes goals, performance measures and strategies for monitoring and achieving the goals. We request the Director to reconsider her position or propose a suitable alternative that would allow the measurement of progress towards the 90 percent goal.

USSOCOM Comments. USSOCOM states that there is no definition in the FAR that defines what constitutes a "sole-source" order. Further, identifying the number and dollar value of orders on service contracts that are awarded sole source will create an unnecessary administrative burden.

Audit Response. We believe that it is beneficial for acquisition reform to measure its impact and benefits. We do not believe that good management practices create unnecessary administrative burden.

B.3. We recommend that the Under Secretary of Defense (Acquisition and Technology) resolve the material management control weakness relating to multiple award task order contracts and determine whether it should be reported as a material management control weakness for the FY 1999 annual statement of assurance.

Director of Defense Procurement Comments. The Director of Defense Procurement nonconcurred. The Director stated that the FAR has recently been revised to prohibit the directing of sources in multiple award contract situations. The Director stated that full competition does not mean that all awardees in a multiple award contract have to compete for each task order delivery order, therefore, there was no management control weakness.

Audit Response. The Director of Defense Procurement comments are not fully responsive. We still believe a material management control weakness exists because of the lack of visibility and oversight of this area. Until the audit, no one in the Department was aware of the low percentage of task orders that were competed. Problem resolution can only result from reporting a problem and tracking the corrective actions. We do not understand the logic in the Director's answer that there was no management control weakness. We request that the Director of Defense Procurement reconsider and provide additional comments on the recommendation.

USSOCOM Comments on the Finding and Audit Response

USSOCOM Comment. USSOCOM stated it did not believe that there is a material management control weakness related to multiple award task order contracts. USSOCOM disagreed with the statement on page 19 that the contracting officer made no determination that other contractors were not capable of performing the work. USSOCOM stated that all contractors were qualified and able to perform the work and stated that the contracting officer's determination of urgency was valid.

Audit Response. We disagree with the comment. The streamlining of the multiple award approach allows awards to be made very quickly. In the case of USSOCOM, the flawed justification was made based on uniqueness and not urgency. The statement USSOCOM made that all contractors were qualified refutes its own argument of uniqueness with respect to this specific situation.

Appendix A. Audit Process

Scope and Methodology

Audit Scope. Our review focused on the procurement actions of multiple award contracts issued by DoD contracting activities for products or services. The procurement actions reviewed covered FY 1995 through FY1998. We examined the statements of work, negotiation memorandums, independent Government cost estimates, technical evaluations, source selection decisions, cost analyses, and miscellaneous correspondence. Our review covered 156 task orders, valued at \$143.7 million, awarded under 50 multiple award contracts with total ceiling amount of \$2.6 billion. We judgmentally selected high dollar multiple award contracts covering all three Military Departments and the Defense Logistics Agency.

DOD-wide Corporate Level Government Performance and Results Act (GPRA) Goals. In response to the GPRA, the DoD has established 6 DoD-wide corporate level performance objectives and 14 goals for meeting these objectives. This report pertains to achievement for the following objectives and goals.

- **Objective:** Fundamentally reengineer the Department and achieve a Twenty-first Century infrastructure. **Goal:** Reduce cost while maintaining required military capabilities across all DoD mission areas. (DoD-6)

DoD Functional Area Reform Goals. Most major DoD functional areas have also established performance improvement reform objectives and goals. This report pertains to achievement of the following functional area objectives and goals.

- **Acquisition Functional Area. Objective:** Fostering Partnerships. **Goal:** With no top-line budget change, achieve annual defense procurement of at least \$54 billion toward a goal of \$60 billion in 2001. (ACQ-2.1)
- **Financial Management Functional Area. Objective:** Strengthen Internal Controls. **Goal:** Improve compliance with the FMFIA. (FM-5.3)

General Accounting Office High Risk Area. The General Accounting Office has identified several high risk areas in DoD. This report provides coverage of the Defense Contract Management high risk area.

Audit Type, Dates, and Standards. We performed this economy and efficiency audit from April 1998 through February 1999 in accordance with audit standards issued by the Comptroller General of the United States as implemented by the Inspector General, DoD. Accordingly, we included tests of management controls considered necessary. We did not use computer-processed data to perform this audit or evaluation.

Contacts During the Audit. We visited or contacted individuals and organizations within DoD. Further details are available upon request.

B. Summary of Prior Coverage

General Accounting Office

GAO Report Number NSIAD 98-215 (GAO Code 707272), "Acquisition Reform: Multiple-Award Contracting at Six Federal Organizations," September 30, 1998.

Inspector General

Inspector General, DoD, Report No 99-002, "Contracting for Defense Finance and Accounting Service Support," October 5, 1998.

Inspector General, DoD, Report 96-034, "Defense Enterprise Integration Services Contract," December 4, 1995.

Inspector General, DoD, Report 96-032, "Time-and-Materials Contracts at the Defense Information Systems Agency," December 1, 1995.

Appendix C. Report Distribution

Office of the Secretary of Defense

Under Secretary of Defense (Comptroller)
Deputy Chief Financial Officer
Deputy Comptroller (Program/Budget)
Under Secretary of Defense (Acquisition and Technology)
Director, Defense Logistics Studies Information Exchange
Director, Defense Procurement
Assistant Secretary of Defense (Public Affairs)
Deputy Under Secretary of Defense (Acquisition Reform)

Department of the Army

Assistant Secretary of the Army (Financial Management and Comptroller)
Auditor General, Department of the Army

Department of the Navy

Assistant Secretary of the Navy (Financial Management and Comptroller)
Auditor General, Department of the Navy

Department of the Air Force

Assistant Secretary of the Air Force (Financial Management and Comptroller)
Auditor General, Department of the Air Force

Defense Organizations

Director, Defense Contract Audit Agency
Director, Defense Logistics Agency
Director, National Security Agency
Inspector General, National Security Agency
Inspector General, Defense Intelligence Agency

Non-Defense Federal Organizations and Individuals

Office of Management and Budget
General Accounting Office
National Security and International Affairs Division
Technical Information Center

Congressional Committees and Subcommittees, Chairman and Ranking Minority Member

Senate Committee on Appropriations
Senate Subcommittee on Defense, Committee on Appropriations
Senate Committee on Armed Services
Senate Committee on Governmental Affairs
House Committee on Appropriations
House Subcommittee on National Defense, Committee on Appropriations
House Committee on Government Reform
House Subcommittee on Government Management, Information, and Technology,
Committee on Government Reform
House Subcommittee on National Security, Veterans Affairs, and International Relations
Committee on Government Reform
House Committee on Armed Services

Under Secretary of Defense (Acquisition and Technology) Comments



ACQUISITION AND
TECHNOLOGY

OFFICE OF THE UNDER SECRETARY OF DEFENSE

3000 DEFENSE PENTAGON
WASHINGTON DC 20301-3000

February 11, 1999

DP/CPA

MEMORANDUM FOR INSPECTOR GENERAL, DEPARTMENT OF DEFENSE

SUBJECT: DoDIG Draft Report on DoD Use of Multiple Award
Task Order Contracts (Project No. 8CF-5022)

I have reviewed the subject report and have the following
comments on the recommendations:

**Recommendations A.1 & 2: We recommend that the Under
Secretary of Defense (Acquisition and Technology):**

1. Direct that multiple award contracting be used only in situations in which all contractors are capable of performing all work under the proposed contract.
2. Direct that the initial contract selection focus primarily on technical capabilities and that subsequent task order selection include price as a primary and substantial selection factor.

I partially concur with Recommendation A.1. The statutory language authorizing multiple award task or delivery order contracts (10 U.S.C. 2304a(d)(1)(B)) provides that separate contracts may be awarded for "the same or similar" services or property. As a general rule, those who are successful in obtaining awards should be capable of performing on all the contemplated tasks. In this way the expected benefit of continuing competition through the life of the contracts will best be achieved. However, the FAR already includes this requirement at FAR 9.104-1 which requires that a prospective contractor must have all the necessary resources and technical skills to perform the contract. It was not intended that each awardee be able to provide exactly the same services. Thus, there may be tasks (unique or specialized) that could not be performed by all awardees. I do not believe additional DoD direction is necessary.



I nonconcur with Recommendation A.2. I believe that there may be instances where, in the interest of making a "best value" purchase, a particular task may need to be awarded to other than the low priced offeror. If, for example, timely performance or specific technical expertise is crucial and the low priced task order offeror does not have a good past performance record on recent tasks, it might be better to pay more for a better assurance of timeliness and quality performance. Even if technical ability were the main criterion for being awarded one of the multiple contracts, not all awardees are of equal ability. Thus, on a particular task, a higher priced but more technically valuable approach might be of best value to the government. The decision of price being a "primary and substantial" factor is best left to the acquisition team based on the circumstances of each procurement.

Recommendations B. 1. a & b: We recommend that the Under Secretary of Defense (Acquisition and Technology) change the FAR pertaining to multiple award contracts. Specifically we recommend that:

- a. Additional language be added to FAR 16.505(b)(2)(iv) stating that awarding orders to meet the guaranteed minimum should be done only as a last resort.
- b. FAR 16.505(b) definition of "a fair opportunity to be considered" be changed to state that an attempt must be made to compete task orders among the multiple awardees with price as a primary factor.

I nonconcur with B.1.a. The need to meet a guaranteed minimum should not be used prematurely as it precludes providing other awardees a fair opportunity to be considered, but when future requirements are unpredictable it may be difficult to know how long into a contract term one should wait before satisfying the minimum. In addition, it might be argued that award of contractually required minimum quantities early in the life of the contracts will establish a relevant performance track record that can be used in subsequent task order award decisions.

I nonconcur with Recommendation B.1.b. I believe the law's "fair opportunity" language was intended to provide a different competition standard in order to streamline the task order placement process, and that it should remain unchanged to allow for contracting officer discretion. This places a burden on the contracting officer to support award decisions made without competition of any kind, and to justify competition limited to

Renumbered

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less than the complete set of multiple awardees. I do not believe it is appropriate to dictate that price must be the primary factor in a source selection without knowing the circumstances of the particular case.

Recommendation B. 2: We recommend that the Under Secretary of Defense (Acquisition and Technology) establish procedures to identify the number and dollar value of orders on services contracts that are awarded sole source, and establish goals and identify strategies to reduce sole-source awards over a 3-year period. Strategies should be constructed to achieve Office of Federal Procurement Policy goal of 90 percent that will be competed with two or more bidders. This type of measurement will provide metrics that can be monitored.

I nonconcur with this recommendation. The DD 350 already captures data on orders under contracts (Block B13A) and whether they are sole source (Blocks C8 and 9). I do not believe an independent strategy is needed beyond the statutory requirement to seek competition wherever practicable.

Recommendation B. 3: We recommend that the Under Secretary of Defense (Acquisition and Technology) resolve the management control weakness relating to multiple award task order contracts and determine whether it should be reported as a material management control weakness for the FY 1999 annual statement of assurance.

I nonconcur with this recommendation. The FAR has recently been revised to prohibit the directing of sources in multiple award contract situations. As for full competition, the multiple award structure was established to provide a measure of competition in an area where sole source awards had been the norm. If by full competition is meant that all awardees in a multiple award contracting situation have to compete for each task or delivery order, I do not believe that is the intent of the law. Therefore, I do not believe there is a management control weakness to report.

Thank you for the opportunity to comment on this draft audit report.



Eleanor R. Spector
Director of Defense Procurement

United States Special Operations Command Comments



UNITED STATES SPECIAL OPERATIONS COMMAND

7701 TAMPA POINT BLVD.
MACDILL AIR FORCE BASE, FLORIDA 33621-5323

15 February 99


SOAL-KM

MEMORANDUM FOR DoD Inspector General Contract Management
Directorate(Bruce A. Burton)

Subject: United States Special Operations Command (USSOCOM)
Response to DoD Inspector General IG Report 8CF-5022

We are pleased to provide the attached comments in response to the DoD IG Audit Report on the DoD Use of Multiple Award Task Order contracts. If you have any questions concerning the response please feel free to contact Joseph R. Daum at (813)840-5448, DSN 299-5448 or email daumj@socom.mil.

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as


GARY W. DILK
Colonel, US Air Force
Director of Procurement

Response to Recommendations. Listed below are the recommendations of the DoD Inspector General Report and the USSOCOM response to the recommendations.

- Recommendation A - "We recommend that the Under Secretary of Defense (Acquisition and Technology):
 1. Direct that multiple award contracting be used only in situations in which all contractors are capable of performing all work under the proposed contract, and
 2. Direct that the initial contract selection focus primarily on technical capabilities and that subsequent task order selection include price as a primary and substantial selection factor."
- USSOCOM response - USSOCOM does not concur with recommendation A1. Implementation of this recommendation may limit opportunities for contractors, in particular small businesses that may only be able to perform a portion of the work required under a large contract. This would only hinder competition
- USSOCOM does not concur with recommendation A2. Although all our contractors are capable of performing all work on all contracts, all contractors do not have the same level of expertise in all areas. In a Time and Materials contract the offerors understanding of the effort and the offerors method of performing the work have more to do with the final cost to the Government than the proposed price. When issuing task orders it is important that we look at the contractor's approach and choose a contractor based on the best value to the Government. It is also important that we receive quality service. The use of the multiple award contracts has been very effective in putting competitive pressure on the contractors to provide quality and efficient service. USSOCOM recommends that the language be clear that best value techniques can be applied at the task order level and that cost must be a factor in the decision of award.
- Recommendation B.1. - "We recommend that the Under Secretary of Defense (Acquisition and Technology) change the FAR pertaining to multiple award contracts. Specifically we recommend that:
 - a. Additional language be added to FAR 16.505(b)(2)(iv) stating that awarding orders to meet the guaranteed minimum stated in the contract should be done only as a last resort.
 - b. FAR 16.505(b) definition of "a fair opportunity to be considered" be changed to state that an attempt must be made to compete task orders among the multiple awardees with price as the primary factor."

Renumbered

Deleted

- USSOCOM response - B.1.a. - It is currently required by law and regulation that the minimum amounts be obligated at time of award. In fact some court cases have demonstrated that it is considered a breach of contract if the minimum amounts are not obligated at the time of award.

USSOCOM does not concur with recommendation B.1.b. We recommend that emphasis be placed on the use of best value techniques. The auditor seems to apply the standards outlined in the Competition in Contracting Act(CICA) to the award of task orders under a contract that has already been completed. The current procedures require that the Contracting Officer outline the procedures in the contract. It is also required that an ombudsman be appointed to deal with contractor complaints. USSOCOM feels that there are adequate protections in place to ensure that the Government receives the best value.

- Recommendation B.2. - "We recommend that the Under Secretary of Defense (Acquisition and Technology) establish procedures to identify the number and dollar value of orders on services contracts that are awarded sole source, and establish goals and identify strategies to reduce sole-source awards over a three year period. Strategies should be constructed to achieve the Office of Federal Procurement goal of 90 percent that will be competed with two or more bidders. This type of measurement will provide metrics that can be monitored."
- USSOCOM response - USSOCOM does not concur with recommendation B.2. It is required that all offerors be given a fair opportunity to be considered for each order unless one of four exceptions listed in the award procedures of the contract applies. When proposals are requested from or an order issued to only one offeror it does not mean that the other offerors were not considered for award. The sole source standards that apply to contracts do not apply to individual task orders. In fact there is no definition in the FAR/DFAR that defines what constitutes a "sole source" delivery order. Therefore, at this point in time, it is impossible to report this data. In addition, USSOCOM does not feel that this additional administrative burden is necessary
- Recommendation B.3. - "We recommend that the Under Secretary of Defense (Acquisition and Technology) resolve the management control weakness relating to multiple award task order contracts and determine whether it should be reported as a material management control weakness for the FY 1999 annual statement of assurance.
- USSOCOM response - We do not believe there is a material management control weakness related to multiple award task order contracts. USSOCOM has used sound best value evaluation techniques to select the offers to receive orders. The use of multiple award task orders has increased the quality and decreased the cost of the services purchased by USSOCOM. The USSOCOM

Scientific Evaluation and Technical Advisory program has received recognition for its dedication to competition.

Clarification of Report facts related to USSOCOM. Listed below is the response to specific facts relating to findings concerning USSOCOM.

- Page 3 - Clarification regarding FAR Requirements - The audit appears to cite FAR 16.505(b)(3) and FAR 15.403-1(c) for the proposition that cost must be a "substantial factor" for the issuance of a task order. We do not believe this is required by the FASA or the FAR. See FAR 16.505(b)(1), the second and third sentence. The purpose of FAR 16.505(b)(3) cross reference to the "competing independently" requirement of FAR 15.403-1(c)(1) is to explain that contracting officers are prohibited from obtaining cost or pricing data prior to the placement of task orders under the circumstances present at FAR 16.505(b)(3)(i) or (ii).

- Page 7 - Competition for Task Orders - The fourth sentence states that nine orders were not issued to the low bidder. This information is incorrect. Only four orders were awarded to a contractor who was not the technically acceptable, low cost offeror. Those four orders were awarded based on best value (an accepted and recommended basis for award). Recommend the fourth sentence be changed to read....

"In total, 31 of 58 orders that were not sole source were awarded to contractors that were not the low bidder at an additional cost of \$2.7M or 19.2 percent. The 31 orders consisted of 4 awarded by Army, 5 by the Navy, 11 by the Air Force, 4 by the Special Operations Command and 7 by other DOD activities."

- Page 9 - Input of Program Office - The wording in the report is incorrect. File documentation reflects the events occurred as depicted below, particularly involving the request for a directed award to 8(a) subcontractor. Recommend sentence nine of the first paragraph that begins with - "Just four days" be changed to read:

"Just four days after award was made, the program office further attempted to get the same support by submitting a separate requirement under Section 8(a) of the Small Business Act. They submitted the requirement with a recommendation of award direct to the 8(a) subcontractor, by-passing the higher cost prime, who did not get the award. The Contracting Officer believed the requirement was for support services that fell within the scope of services awarded under the multiple award contract. With the support of Legal Council, the contracting officer determined that the work was indeed part of the effort awarded to the technically acceptable, low cost company. The request for the new

contract was denied based on the fact the effort was already under contract."

- Page 9 - Input of Program Office - The way paragraph two currently reads it appears that the Contracting Officer followed the technical evaluator recommendation without question which is not the case. Recommend rewording the first of Paragraph two read:

"A Special Operations Command technical evaluator ruled two competitors technically inadequate and selected another contractor, the incumbent from a prior contract, at a cost that was 31 and 42 percent higher, respectively, than the disqualified contractors. However, the Contracting Officer did not follow the recommendation of the Program Manager and conducted negotiations, subsequently awarding the task order at a cost that was 24% lower than the recommendation, reducing the cost differential to 7 to 18 percent higher, respectively, than the disqualified contractors."

- Page 15 - URGENCY and UNIQUENESS - Exception is taken to the second to last sentence in that an assumption is made that the Contracting Officer was/is required to determine the other contractors ~~cannot do the work~~. This is not the case, as there is no such requirement. The Contracting Officer determined that urgency of the mission need and adverse mission impact were valid justifications under the circumstances. The rationale for the award included justification that the Government would be harmed due to adverse mission impact both in timeliness and duplication of cost as well as other factors. The justification did not question the other contractor's ability to do the work or state they lacked qualifications. In fact, all contractors were qualified and able to perform, that was not the issue, urgency and mission needs were the issues.

Audit Team Members

This report was prepared by the Contract Management Directorate, Office of the Assistant Inspector General for Auditing, DoD.

Paul J. Granetto
Terry L. McKinney
Bruce A. Burton
Steven I. Case
Billy J. McCain
Chuck J. Chin
LaNita C. Matthews
Robert E. Bender
John A. Seger
Johnnie El-Gharib
Ana M. Myrie